



May 11, 1999

Mr. James P. Lewis
Assistant District Attorney
Dallas County
Administration Building
411 Elm Street
Dallas, Texas 75202

OR99-1277

Dear Mr. Lewis:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 124092.

The Dallas County Sheriff's Office received a request for two categories of information. Specifically,

1. Name and rank of any and all constables or deputy constables employed [by Dallas County Constable Precinct 5], between the dates of December 15, 1996 and December 22, 1996.
2. Location and activities of these same individuals for the afternoon from 12:00 noon to 4:00 p.m. Friday, December 20, 1996.

You claim that some of the requested information is excepted from required public disclosure by sections 552.101, 552.102, and 552.108 of the Government Code. You have provided this office a sample of the requested information for our review.¹

You also argue that responding to the request for information is burdensome and time consuming. Administrative inconvenience of providing public records is not grounds for refusing to comply with the mandates of chapter 552. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977).

¹ We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988); 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Additionally, this office has stated that a governmental body must make a good faith effort to relate a request to information held by it. Open Records Decision No. 561 at 8-9 (1990), 87 (1975). Further, an officer for public information is required to promptly produce public information. Gov't Code § 552.221.

Additionally, you state that "[n]o reason for the [open records] request was given in the citizen's letter." Please note that the purpose of the citizen's open records request is not a factor in our consideration here. See Gov't Code § 552.223 (requiring uniform treatment of all requests regardless of "position or occupation" of requestor). Furthermore, section 552.222(a) specifically forbids governmental bodies from making such inquiries of the requestor. Consequently, the sheriff may withhold the requested information only to the extent that the exceptions you raised apply to the information at issue.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," including information coming within the common-law right of privacy.² *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Information may be withheld from the public pursuant to common-law privacy when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *Id.* at 685. You also raise section 552.102, which protects "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." The protection of section 552.102 is the same as that of the common-law right to privacy under section 552.101. *Hubert v. Harte-Hanks Tex. Newspapers*, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref'd n.r.e.). Consequently, we will consider these two exceptions together.

You seek to withhold information relating to public employees' sick days, vacation days, and personal days taken. Although certain medical information is protected by common-law privacy, see Open Records Decision No. 455 (1987), the names of employees taking sick leave and dates thereof are not excepted from public disclosure by section 552.102(a). Open Records Decision No. 336 (1982). Consequently, we do not believe that you may withhold any of the requested information under a right of privacy under either section 552.101 or 552.102.

You claim that portions of the requested information are protected by section 552.108 of the Government Code. Section 552.108 of the Government Code provides:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

²You have pointed to no statute, nor are we aware of one, that makes the requested information confidential.

(1) release of the information would interfere with the detection, investigation, or prosecution of crime;

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication; or

(3) it is information that:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation;

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from the requirements of Section 552.021 if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution;

(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication; or

(3) the internal record or notation:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation;

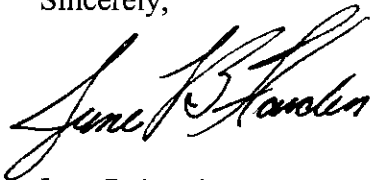
(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

(c) This section does not except from the requirements of Section 552.021 information that is basic information about an arrested person, an arrest, or a crime.

Gov't Code § 552.108. Generally, a governmental body claiming an exception under section 552.108 must reasonably explain, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a)(1), (b)(1), .301(b)(1); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that some of the requested information "may" concern investigations that are currently ongoing or awaiting prosecution. You have not, however, shown that release of any of the requested information relates to the detection, investigation, or prosecution of any particular crime. Nor have you shown how the release of the information would otherwise interfere with law enforcement. We, therefore, conclude that you have not met your burden of demonstrating the applicability of section 552.108. The sheriff, therefore, must release the requested information in its entirety.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,

A handwritten signature in cursive script, appearing to read "June B. Harden".

June B. Harden
Assistant Attorney General
Open Records Division

JBH/JDB/RWP/eaf

Ref: ID# 124092

encl: Submitted documents

cc: Mr. Timothy M. Ratcliff
7457 Brentcove Circle
Dallas, Texas 75214
(w/o enclosures)